

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER

IN THE MATTER OF: CITY OF GRAFTON Wastewater Facility No. 6-98-25-0-01	ADMINISTRATIVE CONSENT ORDER NO. 2009-WW-15
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TO: City of Grafton
c/o John Bork, Mayor
109 3rd Avenue
P.O. Box 550
Grafton, IA 50440

I. SUMMARY

This administrative consent order ("Order") is entered into by the City of Grafton ("Grafton") and the Iowa Department of Natural Resources ("Department"). This Order requires Grafton to eliminate wet weather bypassing, obtain construction permits for all future construction or modification to the wastewater facility, and pay an administrative penalty. In the interest of avoiding litigation, the parties agree to the following Order.

Any questions or response regarding this Order should be directed to:

Relating to technical requirements:
Eric Wiklund, Environmental Specialist
IDNR Field Office #2
2300 15th Street S.W.
Mason City, Iowa 50401
Ph: 641/424-4073

Relating to legal requirements:
Diana Hansen, Attorney at Law
Iowa Department of Natural Resources
502 E. 9th St.
Des Moines, Iowa 50319-0034
Ph: 515/281-6267

Direct payment of penalty to:
Iowa Department of Natural Resources
502 E. 9th St.
Des Moines, Iowa 50319-0034

II. JURISDICTION

The parties hereby agree that this Order is issued pursuant to Iowa Code section 455B.175(1), which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division III, Part 1,

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
CITY OF GRAFTON**

and the rules promulgated or permits issued pursuant thereto, and Iowa Code section 455B.109 and 567 Iowa Administrative Code ("IAC") chapter 10, which authorize the Director to assess administrative penalties.

III. STATEMENT OF FACTS

The parties agree to the following Statement of Facts:

1. Grafton is a community in Worth County, with a population of 290. Wastewater treatment consists of a three-cell controlled discharge waste stabilization lagoon, with a total of 5.3 acres of surface area. The facility is located on the south side of town adjacent to the railroad tracks, about 4/10 of a mile south of 1st Street and 390th Street. Wastewater is pumped to the lagoons by a lift station with two pumps. The system was constructed in 1977-78.

2. The current NPDES permit, No. 6-98-25-0-01, was issued to Grafton on March 13, 2006. The permit expires on March 12, 2011. The permit is issued with conditions. Condition 21(b) is that bypasses are prohibited, except where certain conditions are met.

3. On October 30, 2007, Jeremy Klatt, an Environmental Specialist with the Department, conducted a wastewater inspection at Grafton. Mr. Klatt noted that Grafton had not been reporting wet weather bypassing to the Department. The treatment plant is designed to treat an average wet weather flow of 0.0283 MGD. The average influent flow from October 2006 to September 2007 was 0.032 MGD, slightly above the design capacity. Infiltration and inflow ("I/I") is likely contributing to these flows during wet weather periods. The report suggested that Grafton should budget funding for I/I reduction and elimination.

The collection system was televised in 2006, with no major issues discovered during the televising. Grafton completed house-to-house inspections looking for illegal sump pump connections. A few connections were located and disconnected. It is likely that manholes in the collection system are allowing infiltration and need to be rehabilitated. The report also noted that Grafton has hired an engineering firm to develop a long-term plan for both the water supply and wastewater facilities. This includes a plan for I/I work.

4. On November 2, 2007, the Department issued a notice of violation letter and inspection report to Grafton after the wastewater treatment facility inspection of October 30, 2007. The letter stated that the report summarized recommendations for facility operation improvements and required four separate actions that were to be completed in order to comply with the IAC. These actions were to continue to comply with permit limits, control vegetation on the inner berm of the lagoons, report wet weather bypasses

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
CITY OF GRAFTON**

on the monthly operation reports, and control burrowing animals and fill burrows with clay.

5. In August 2007, Grafton bypassed wastewater from the lift station for four days, August 20- 23, with a total volume of approximately 66,500 gallons. In April 2008, Grafton bypassed wastewater from the lift station for eight days, April 1, 10- 11, 19- 20, and 25- 27, with a total volume of approximately 62,100 gallons. In May 2008, Grafton bypassed wastewater from the lift station for two days, May 30- 31, with a total volume of approximately 14,850 gallons. In June 2008, Grafton bypassed wastewater from the lift station for ten days, June 6, 8- 15, and 28, with a total volume of approximately 107,550 gallons. In July 2008, Grafton bypassed wastewater from the lift station for one day, July 8, with a total volume of approximately 2,550 gallons. The facility bypassed wastewater from the lift station for 21 total days in 2008. The bypasses were all reported on monthly operation reports. Most of the June bypassing occurred during a heavy rainfall. However, the other days of bypassing occurred during normal rainfall events.

6. On February 3, 2009, Eric Wiklund, an Environmental Specialist with the Department, conducted a wastewater inspection at Grafton. During the inspection, Mr. Wiklund and Russ Horgen, Grafton's wastewater operator, discussed the bypasses that occurred during 2008. Most of the bypasses did not occur under extreme or heavy wet weather event conditions. The treatment plant is designed to treat an average wet weather flow of 0.0283 MGD. The average influent flow for all of 2008 was 0.027 MGD, near the design capacity. I/I is likely contributing to these flows during normal wet weather periods.

An inspection at the lift station led to the discovery of two trash pumps (bypass pumps) that were permanently installed in the wet well with automated switches. This allows the bypass pumps to operate whenever the wet well reaches a certain level. Mr. Horgen stated that he is notified via the auto dialer (high water alarm) when this occurs. However, the automated nature of the bypass pumps allows for potential unmonitored bypassing. Mr. Horgen did not know when the pumps and automatic switches were installed. The Department did not receive a construction permit application from Grafton and did not issue a construction permit for the installation of the bypass pumps. Moreover, the Department would not allow such a bypass to be installed.

7. On February 23, 2009, the Department issued a notice of violation letter to Grafton after the wastewater treatment facility inspection of February 3, 2009. The letter summarized recommendations for facility operation improvements and stated two required actions that were to be completed in order to comply with the IAC. The facility was required to submit a plan of action addressing I/I problems by July 1, 2009. Grafton was required to remove the automatic bypass by April 1, 2009. The City's operator informed the field office that the bypass was removed after the City received the cover letter and inspection report requiring removal of the bypass.

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
CITY OF GRAFTON**

8. To the best of the Department's knowledge, Grafton has hired an engineering firm to develop a long-term plan for both the water supply and wastewater facilities. This includes a plan for I/T work.

IV. CONCLUSIONS OF LAW

The parties agree to the following Conclusions of Law:

1. Iowa Code section 455B.186 prohibits the discharge of pollutants into waters of the state, except for adequately treated pollutants discharged pursuant to a permit.
2. Iowa Code section 455B.183 prohibits the construction or modification of a wastewater disposal system without a permit from this Department. Iowa Code section 455B.183 also prohibits the operation of a wastewater disposal system without or contrary to a permit from the Department.
3. Iowa Code section 455B.173 authorizes and requires the Environmental Protection Commission ("Commission") to promulgate rules relating to the construction and operation of waste disposal systems and the discharge of pollutants into waters of the state. The Commission has done so at 567 IAC chapters 60-69.
4. Subrule 567 IAC 64.2(1) prohibits the construction or modification of any waste disposal system without a permit. Subrule 567 IAC 64.3(1) prohibits the operation of a wastewater treatment facility without or contrary to the terms of an operation permit. The facts stated in Section III of this Order disclose construction and operation in violation of the above-cited provisions of statute and rule.
5. Subrule 567 IAC 60.2 defines bypass as "[T]he diversion of waste streams from any portion of a treatment facility or collection system. A bypass does not include internal operational waste stream diversions that are part of the design of the treatment facility, maintenance diversions where redundancy is provided, diversions of wastewater from one point in a collection system to another point in a collection system, or wastewater backups into buildings that are caused in the building lateral or private sewer line."
6. Subrule 567 IAC 63.6(3), effective until April 15, 2009, required bypasses to be reported in monthly operation reports. Subrule 63.6(1), effective April 15, 2009, states: "*Prohibition.* Bypasses from any portion of a treatment facility or from a sanitary sewer collection system designed to carry only sewage are prohibited. The department may not assess a civil penalty against a permittee for a bypass if the permittee has complied with all of the following: *a.* The bypass was unavoidable to prevent loss of life, personal injury, or severe property damage; *b.* There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
CITY OF GRAFTON**

satisfied if adequate backup equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and c. The permittee submitted the information required in 63.6(2) 63.6(3), and 63.6(5)."

7. Subrule 567 IAC 63.6(3)"d", effective April 15, 2009, states: "Bypasses shall be reported with the monthly operation report, as a separate attachment, that includes: (1) The reason for the bypass, including the amount and duration of any rainfall event that may have contributed to the bypass; (2) The date and time of onset or discovery of the bypass; (3) The duration of the bypass; (4) An estimate of the amount of untreated or partially treated sewage or wastewater that was discharged; (5) The location of the bypass; and (6) The name of any body of surface water that was affected by the bypass." Subrule 567 IAC 63.6(3) requires the proper Department Field Office to be notified by telephone no later than 12 hours of the onset or discovery of an unanticipated bypass or upset.

V. ORDER

Therefore, the Department orders and Grafton agrees to comply with the following provisions in order to abate and redress violations of Department rules and the facility's NPDES permit:

1. Obtain the services of a professionally licensed engineer to conduct a study of Grafton's wastewater treatment facility. Grafton agrees to submit a preliminary engineering report by December 1, 2009. The preliminary engineering report is required to include corrective measures for addressing I/I into the collection system and a schedule for the elimination of bypassing from the system. Grafton agrees to comply with the schedule to implement corrective measures and to complete the items in the schedule in accordance with the time frame of the schedule approved by the field office.
2. Obtain a construction permit for all future changes, modifications, and additions to the wastewater facility.
3. Pay an administrative penalty of \$1,500.00. The penalty shall be paid to the Department within 60 days of receipt of this Order, after it is signed by the Director.

VI. PENALTY

1. Iowa Code section 455B.191 authorizes the assessment of civil penalties of up to \$5,000.00 per day of violation for the violations involved in this matter. More serious criminal sanctions are also available pursuant to that provision.

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
CITY OF GRAFTON**

2. Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000.00, which may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties in 567 IAC chapter 10.

Pursuant to these rules, the Department has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an Order with an administrative penalty of \$1,500.00. The administrative penalty assessed by this Order is calculated as follows.

a. Economic Benefit. Grafton intended to save personnel expenses and inconvenience to operators by installing the bypass. Additional personnel expense for pumping during high rainfall events would be avoided by the installation of the bypass. Normally, the wastewater operator monitors and operates bypass pumps. In this situation, the bypassing happened automatically. For these reasons, \$500.00 is assessed for this factor.

b. Gravity of the Violation. One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for the type of violation. As indicated above, substantial civil penalties are authorized by statute. Construction prior to obtaining required permits threatens the integrity of the permit and water programs. Construction permits are required to ensure that wastewater treatment facilities are constructed in accordance with Department design standards and requirements. Since the bypass that was installed is not allowed, the Department would have denied issuance of a construction permit and would have advised Grafton that the proposed bypass installation was not allowed. The installation of automated pumps removes the human factor from the bypassing process. The operator is unaware of when bypassing occurs and therefore cannot monitor volume or duration. Bypassing untreated wastewater is detrimental to the environment. For these reasons, \$500.00 is assessed for this factor.

c. Culpability. The Iowa Code and Department rules clearly state that construction cannot be initiated without a construction permit. Grafton has had a wastewater facility and NPDES permit since 1978. It is Grafton's responsibility to be aware of Iowa Code and rule requirements. For these reasons, \$500.00 is assessed for this factor.

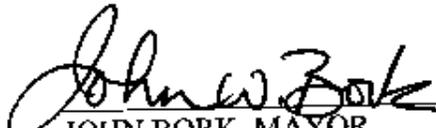
VII. WAIVER OF APPEAL RIGHTS

Iowa Code section 455B.175(1), and 561 IAC 7.5(1), as adopted by reference by 567 IAC chapter 7, authorize a written notice of appeal to the Commission. This Order is entered into knowingly by and with the consent of Grafton. By signature to this Order, all rights to appeal this Order are waived.

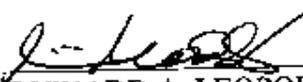
IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
CITY OF GRAFTON

VIII. NONCOMPLIANCE

Compliance with Section V of this Order constitutes full satisfaction of all requirements pertaining to the specific violations described in this Order. Failure to comply with this Order may result in the imposition of additional administrative penalties pursuant to an administrative order or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.191.


JOHN BORK, MAYOR
CITY OF GRAFTON

Dated this 15th day of
June, 2009


RICHARD A. LEOPOLD, DIRECTOR
IOWA DEPARTMENT OF NATURAL RESOURCES

Dated this 19 day of
June, 2009

City of Grafton – NPDES Permit No. 6-98-25-0-01, copy to Central Office Records File,
Eric Wiklund – Field Office No. 2, Diana Hansen – Legal Services, U.S. EPA- Region 7,
1.A.1, 1.B.2d.